

The City Engineer and Indiana Municipal Law

CHRISTIAN J. LITSCHER

Deputy Director

Indianapolis Department of Transportation

INTRODUCTION

Most engineers are not lawyers, and most lawyers are not engineers. Both professions generally regard this as a good state of affairs—viewing each other with a certain degree of friendly distrust. While the attorney in government need not necessarily concern himself with municipal engineering matters, the engineer in government cannot avoid concerning himself with municipal law. He must exercise good engineering judgement in his activities, but at the same time he must carry out these activities within a rather rigid framework of procedures established under Indiana law.

And, whereas the municipal engineer can go to various texts, handbooks, etc. for technical information to carry out his engineering work, there is no handy reference guide for the laws under which he must operate. Unfortunately they are scattered throughout various statutes passed by the Indiana General Assembly over the past 120 years and in certain decisions of the Indiana Supreme and Appellate Courts. The statutes have recently been codified in the Indiana Code of 1971, and the statutes and court decisions are compiled and continuously updated in Bobbs-Merrill's Burns Indiana Statutes. All of this, however, is of little help to the nonattorney because of complex and often archaic language of the statutes, plus their arrangement, which from a logical engineering standpoint, is not particularly logical.

This writer has spent four years of his city engineering career as a part-time law student—finally accumulating enough credit hours to receive his degree. Thus, he has been in a rather unique position to view the matter of Indiana municipal law from both sides of the street and to gain a considerable amount of legal knowledge through research on the subject. The purpose of this article is to give the city engineer the flavor of the legal framework in which he must function, and to

suggest the proper course of action, with respect to gaining adequate knowledge of Indiana municipal law.

BACKGROUND OF INDIANA MUNICIPAL LAW

Cities and towns are often referred to as "Creatures of the State Legislature." They are not even mentioned in the Indiana Constitution. The establishment of cities and towns and everything governing their operation has occurred through legislation of the Indiana General Assembly which is permitted by the Indiana Constitution to delegate certain state functions to local governmental units, including those created by the Indiana General Assembly itself.

A city or town can do something only if permitted to do it by an act of the state legislature, and it must do it in the manner prescribed by that act. The General Assembly provides a rather rigid framework within which cities and towns must operate.

Most current municipal law dates back to 1905 when the legislature passed a rather lengthy act codifying all previous laws dealing with the operation of cities and towns. Much of the original act is still valid today. Even where portions of the 1905 act have been replaced, its spirit and philosophy still pervades the newer legislation. Procedures established in 1905 remain virtually unchanged. Most changes have occurred to permit later innovations in governmental structure, to take into account the decreasing value of the dollar (e.g., raising the minimum for public purchases without competitive bidding) and the like.

PRINCIPLES UNDERLYING INDIANA MUNICIPAL LAW

Although some of the legal procedures the city engineer is required to go through to get a job done often seem onerous and an impediment to its expeditious completion, they generally relate to some of the legal principles embodied by America's founding fathers in the Declaration of Independence, the Constitution, and its Bill of Rights.

First of all, they are designed to protect the general public from capricious acts of public officials, giving the citizens their right to due process and equal protection guaranteed by the Constitution. Secondly, they protect public officials from capricious acts of citizens. They establish a consistent and legally viable means of doing the necessary acts to provide the services required of local government—procedures which guarantee that the constitutional rights of the citizens are not abrogated and which provide means of appeal for citizens who feel ag-

grieved by the actions of local government. And, although not contained in the discrete language of any statute, another important underlying principle of Indiana municipal law is that of keeping public officials honest—or at least providing a basis for prosecution if they should chance to violate their public trust and someone wishes to press the matter.

AN EXAMPLE OF INDIANA MUNICIPAL LAW: PUBLIC IMPROVEMENT PROJECT PROCEDURE

The subject of municipal law, even in the rather narrow area of the city engineer's scope of activities, is highly complex and intertwined with other related legal matters. It can only be summarized in a lengthy indexed compilation, which is far beyond the scope of this article. One can, on the other hand, get an idea of the import of the law and its ramifications through an appropriate example. One is that of the public improvement project procedure which every city engineer will encounter to some degree whenever he sets out to reconstruct a street, construct a sewer, remodel a building, etc.

At the end of this article is a summary of the major steps in the Public Improvement Project Procedure followed by a fairly detailed delineation of that procedure. It is taken basically from Chapter 317 of the acts of the 1969 Indiana General Assembly, officially titled "The City and Town Street, Alley and Other Public Improvement Act of 1969", but it also covers some of the procedure contained in Acts 1967 Chapter 221 dealing with Barrett Law bonds, their issuance, collection, etc., the Acts 1905 Chapter 48 and acquisition procedure, plus several others. Depending upon the particular city or town, the class of city or town, or the type of public improvement, there may be a special statute which will vary the procedure slightly, establish a particular assessment formula, etc.; but the basic steps, the things which must be done and the way they must be done, will not change appreciably from the outline.

Reviewing the procedure outline briefly, there are several points worth noting. A resolution adopted by the appropriate board (e.g., Board of Public Works) is generally necessary to initiate a project. This requires a public hearing with appropriate notice given to the general public through newspaper advertisement. However, several projects may be grouped together in a single hearing. If benefited property owners are to be assessed, they must be notified by mail. Even if nobody raises an objection at the hearing or in writing, the board has discharged its obligation to notify its intent to those citizens whose

money is being spent. In the matter of acquisition of real estate for a public improvement project, a city or town always has the right to take necessary property on the theory that the public interest outweighs the owner's private interest—but the law provides the mechanism for the property owner to receive just compensation for the taking. The bidding and contract award procedures are designed to attract bidders, to promote honesty among public officials and contractors, and to make certain that the taxpaying public gets the most for its money. The contractor payment scheme provides the means for the contractor to receive either his money or a debt instrument from the city in a reasonably prompt manner so that he can continue in business and complete the contract.

Two additional activities relate only to what are commonly referred to as "Barrett Law" projects in which all or a portion of the cost of the public improvement project is assessed against the benefited property owners: adoption of the Final Assessment Roll and collection of the assessments (with subsequent payment to the contractor). Under this arrangement the contractor "holds the bag" for the portion of the contract price assessed against the benefited property owners. Since this is a deferred payment situation and since he has to pay more interest for his operating capital than the statutory maximum of six (6) per cent on the Barrett Law bonds he receives, prices tend to be higher than on similar projects paid totally from city funds. However, with respect to both assessment roll adoption and assessment collection, the interests of all parties (the property owner, the contractor and the city) are all adequately protected, and they are given proper legal procedures to insure such protection.

RECOMMENDATION: MAKE FRIENDS WITH YOUR CITY ATTORNEY

In the preceding section it was noted that the Public Improvement Project Procedure outline was taken from three basic statutes. It should be further noted that none of the three make any reference to the other—one simply has to know that something is missing from the basic statute and where to find it. Further, this writer would recommend reading Acts 1969 Chapter 317, which can be found in the Indiana Code of 1971 under Title 19, Article 8, Chapter 16 (IC 1971 19-8-16) or in Burns Indiana Annotated Statutes Title 48, Chapter 27, Sections 48-2701 through 48-2739 (Burns 48-2701 through 48-2739). In many instances the procedural steps do not stand out nor do they all follow in the logical sequence of actual operation.

Also, there is a lot of “legal” language, and a number of special situations not normally encountered are covered. If you use Burns, make certain that you don’t read the material covered under those section numbers in the bound volume—they were all repealed by Acts 1969, Chapter 317, and you must use the pocket supplement found in the back of the bound volume. If the pocket supplement isn’t at least 1969 vintage, then you don’t have the current statute.

The point of the preceding paragraph is to illustrate that one cannot become an overnight legal expert, and a little knowledge can be a dangerous thing. If a city engineer misguidedly uses a statute out of context, or uses the wrong statute, he can cause himself (and possibly the city as well) a lot of trouble. Thus, it is this writer’s recommendation that a city engineer stick to engineering and cultivate the friendship of the city attorney to get answers to his legal questions. As the city engineer becomes acquainted with the various procedures that the law requires him to follow, he should set them down in a layman’s outline with the aid of the city attorney. He can then seek the attorney’s advice whenever he encounters a new problem.

SUMMARY

To repeat the opening statement: Most engineers are not lawyers, and most lawyers are not engineers, and, for better or for worse, engineers in government must depend more upon attorneys than attorneys need to depend upon engineers within the governmental framework. However, what the city engineer needs to know about law generally relates to the procedures he must follow in carrying out his duties. And, without being concerned about the classic legal principle (if any) that undergirds the procedure, he can, with the city attorney’s aid, learn the procedure and its proper application.

So, in the final analysis, we come to the technical handbook analogy: It’s not so much knowing the information by memory as knowing where to find it. The same principle applies to the city engineer’s knowledge of municipal law, and the “where to find it” is the city attorneys office.

PUBLIC IMPROVEMENT PROJECT PROCEDURE SUMMARY

	<i>Applicability—Based on Financing</i>	
	<i>100 Percent General Tax Monies</i>	<i>Total or Partial Property Owner Assessment</i>
1. Resolution and Public Hearing	X	
2. Resolution, Preliminary Assessment Roll and Public Hearing		X
3. Completion of Plans, Specifications, Cost Estimates, and Land Acquisition Instruments	X	X
4. Land Acquisition	X	X
5. Construction Contract Bidding and Award	X	X
6. Completion of Construction and Payments to Contractor From General Tax Monies	X	X
7. Final Assessment Roll Adoption		X
8. Collection of Assessments From Property Owners and Payment to Contractor		X

PUBLIC IMPROVEMENT PROJECT PROCEDURE

1. RESOLUTION—PROJECT FINANCED 100 PERCENT BY GENERAL TAX MONIES

1.1 *Initiation of Project and Resolution*

1.11 By board decision and action

1.2 *Preparation of Resolution*

1.21 Contents of resolution

1.211 Title of project

1.212 Declaration of board's intent to carry out project

1.2121 Design

1.2122 Land acquisition

1.2123 Construction

1.213 Scope of project

1.214 Estimated cost of project

1.2141 Design

1.2142 Land acquisition

1.2143 Construction contract

1.2144 Construction inspection

Note
Need not be broken down
in such detail for the res-
olution

(Note: The above cannot include city personnel costs)

1.3 *Introduction of Resolution at Board Meeting*

- 1.31 Set public hearing date (allowing sufficient time for notice per 1.4, below)
- 1.32 Authorize publication of notice of public hearing

1.4 *Notice of Public Hearing on Resolution*

- 1.41 Contents of notice
 - 1.411 Contents of resolution listed under 1.21, above
 - 1.412 Date, time, and place of public hearing
 - 1.413 Purpose of hearing per 1.52, below
 - 1.414 Name of board
- 1.42 Method of publication
 - 1.421 Classified newspaper advertisement
 - 1.4211 Two (2) newspapers of general circulation in the city
 - 1.4212 Two (2) publications, seven (7) days apart; last publication no less than ten (10) days prior to the public hearing

1.5 *Public Hearing on Resolution*

- 1.51 Date, time and place
 - 1.511 In accordance with notice of 1.4, above
 - 1.512 May be adjourned and/or continued from time to time at board's discretion without further newspaper notice of subsequent meetings
- 1.52 Purposes
 - 1.521 Presentation of proposal by board and staff
 - 1.522 Presentation of testimony (both pro and con) by representatives of the public
 - 1.523 Adoption, modification, or rejection of resolution by majority vote of board

1.6 *Remonstrances Against Resolution*

- 1.61 Bases for remonstrance
 - 1.611 Project not required by public necessity
 - 1.612 Costs of project will exceed benefits to general public
 - 1.613 Board has no legal authority to act in this matter
- 1.62 Method of remonstrance
 - 1.621 Lawsuit to enjoin board from proceeding further with the project.

2. RESOLUTION—PROJECT FINANCED WHOLLY OR PARTIALLY BY ASSESSMENTS AGAINST BENEFITED PROPERTY OWNERS

2.1 *Initiation of Project*

- 2.11 By board decision
- 2.12 By petition (Note: Resident owners of at least 51 percent of the parcels of real estate which will be assessed should sign petitions before the board considers initiating a project)

2.2 *Declaration of Board's Intent to Proceed With Project*

- 2.21 Majority vote of board

2.3 *Preparation of Preliminary Plans and Cost Estimates*

- 2.31 Complete preliminary plans to extent necessary to determine effect on abutting property and to make cost estimates
 - 2.32 Estimate cost of project
 - 2.321 Design
 - 2.322 Land acquisition
 - 2.323 Construction contract
 - 2.324 Construction inspection
- Note
Need not be broken down
in such detail for the res-
olution
- (Note: The above cannot include city personnel costs)

2.4 *Preparation of Preliminary Assessment Roll*

- 2.41 For each benefited property to be assessed, determine and list:
 - 2.411 Legal description
 - 2.412 Owner name and address
 - 2.413 Maximum assessment against the property (based upon the statutory formula, or upon board's discretion if no formula provided by statute—must be consistent among all benefited properties)
 - 2.414 Assessment against city (if any) in respect of the property

2.5 *Preparation of Resolution*

- 2.51 Contents of resolution
 - 2.511 Title of project
 - 2.512 Declaration of board's intent to carry out project
 - 2.5121 Design
 - 2.5122 Land acquisition
 - 2.5123 Construction
 - 2.5124 Assessment of benefited property (preliminary assessment roll incorporated by reference)
 - 2.513 Scope of project
 - 2.514 Estimated cost of project

2.6 *Introduction of Resolution at Board Meeting*

- 2.61 Set first public hearing date (allowing sufficient time for notice per 2.7, below)
- 2.62 Authorize publication of notice of public hearing

2.7 *Notice of Public Hearing on Resolution*

- 2.71 Contents of notice
 - 2.711 Contents of resolution
 - 2.712 Date, time and place of public hearing
 - 2.713 Purpose of public hearing as per 2.82, below
 - 2.714 Name of board
- 2.72 Methods of publication
 - 2.721 Classified newspaper advertisement
 - 2.7211 Two (2) newspapers of general circulation in the city
 - 2.7212 Two (2) publications, seven (7) days apart; last publication no less than ten (10) days prior to the public hearing
 - 2.722 First class U.S. mail to each property owner to be assessed
 - 2.7221 One (1) notice, sent no less than ten (10) days prior to the public hearing

2.8 *First Public Hearing on Resolution*

- 2.81 Date, time and place
 - 2.811 In accordance with notice of 2.7, above
 - 2.812 May be adjourned and/or continued from time to time at board's discretion without further newspaper or mail notice of subsequent meetings
- 2.82 Purposes
 - 2.821 Presentation of proposal by board and staff
 - 2.822 Presentation of testimony (both pro and con) by property owners
 - 2.823 Confirmation, modification, or rejection of resolution by majority vote of board
 - 2.824 Establishment of date for second hearing on resolution (two weeks hence, minimum)

2.9 *Remonstrances Against Resolution*

- 2.91 Bases for remonstrance
 - 2.911 Project not required by public necessity
 - 2.912 Cost of project excessive considering the character and value of properties to be assessed

- 2.913 Assessment against property will exceed benefits to property
- 2.914 Board has no legal authority to act in this matter
- 2.92 Methods of remonstrance
 - 2.921 Writing to board within ten days of resolution confirmation under 2.823, above
 - 2.922 Lawsuit to enjoin board from proceeding further with the project
- 2.93 Override of remonstrance
 - 2.931 In the event sufficient written remonstrances are filed under 2.921, above, to preclude board from proceeding with the project under its particular statute, and in the event board deems that the project should proceed notwithstanding remonstrances, it may submit an ordinance to the City Council to override the remonstrances
 - 2.932 City Council processes the ordinance according to law, holds public hearing, etc., and ultimately overrides or sustains the remonstrances by passage or rejection of the ordinance.

2.10 *Second Public Hearing on Resolution*

- 2.101 Date, time and place
 - 2.1011 As established in 2.824, above
 - 2.1012 May be adjourned and/or continued from time to time at board's option without further public notice
- 2.102 Purposes
 - 2.1021 Consideration of written remonstrances
 - 2.1022 Establish maximum assessment that can be charged against each benefited property (by adoption of preliminary assessment roll as part of the resolution)
 - 2.1023 Final adoption or rejection of resolution by majority vote of board

3. COMPLETION OF PLANS, SPECIFICATIONS, COST ESTIMATE, AND LAND ACQUISITION INSTRUMENTS

3.1 *Prior Steps Required*

- 3.11 Adoption of a resolution per Section 1 or Section 2, above

3.2 *Completion of Construction Plans, Specifications, and Final Cost Estimate*

- 3.21 Under supervision and seal of registered professional engineer

3.22 Specifications must:

- 3.221 Be compatible with statutory public bidding procedures for the city
- 3.222 Require general contractor to post 100 percent performance bond and 3-year 10 percent maintenance bond

3.3 *Preparation of Land Acquisition Instruments*

- 3.31 Plans showing permanent and temporary takings
- 3.32 Deeds containing legal descriptions of permanent and temporary takings

4. LAND ACQUISITION

4.1 *Prior Steps Required*

- 4.11 Completion of land acquisition instruments per 3.3, above

4.2 *Appraisal*

- 4.21 Appraisal of the value of each permanent and temporary taking (Note: Though not a requirement of law, it is recommended that competent, experienced, professional appraisers be employed for this purpose)

4.3 *Negotiation*

- 4.31 Using the appraisal made under 4.2, above, as a basis, attempt to negotiate a fair price for the property
- 4.32 If negotiations fail, go to eminent domain proceedings (condemnation) per 4.5, below

4.4 *Closing the Property Transfer*

- 4.41 Once negotiations on price under 4.31, above, are complete, property owner executes deed prepared under 3.32, above, and signs claim voucher for the agreed price
- 4.42 Promptly record the deed executed under 4.41, above, in the county recorder's deed records (Note: Prompt recordation is important to insure that the interests which the city has acquired are properly protected)
- 4.43 Expeditiously process property owner's claim voucher executed under 4.41, above, and deliver his check as soon as possible

4.5 *Eminent Domain Proceedings*

- 4.51 City attorney files lawsuit against each property owner with whom negotiations under 4.3, above, have been unsuccessful, to acquire the property by court order and to have the court determine the value of the taking

- 4.52 Court appoints its own appraisers who report their findings regarding the value of the taking to the court
- 4.53 Board pays amount of appraisal determined under 4.52, above, into court, where it is held in escrow for property owner, who may draw it out by posting a surety bond with the court
- 4.54 Upon payment of court appraisal per 4.53, above, board acquires right of entry upon the property and carries on its necessary construction while the wheels of justice grind
- 4.55 Court ultimately determines value of taking and awards title to the property to the city

5. CONSTRUCTION CONTRACT BIDDING AWARD

5.1 *Prior Steps Required*

- 5.11 Completion of construction plans and specifications per Section 3, above
- 5.12 Completion of land acquisition per Section 4, above
- 5.13 Appropriation of any general tax monies required

5.2 *Advertisement for Bids*

- 5.21 Contents of Advertisement
 - 5.211 Title of project
 - 5.212 Scope of contract
 - 5.213 Bid bond requirements
 - 5.214 Date, time and place of bid opening (Note: Date may be extended beyond minimum time required under 5.2212, below, to allow reasonable time for contractors to prepare bids)
 - 5.215 Name of board
- 5.22 Method of advertisement
 - 5.221 Classified newspaper advertisement
 - 5.2211 Two (2) newspapers of general circulation in the city
 - 5.2212 Two (2) publications, seven (7) days apart; first publication no less than ten (10) days prior to bid opening

5.3 *Opening of Bids*

- 5.31 Date, time and place
 - 5.311 In accordance with advertisement of 5.2, above
- 5.32 No bids may be received after the deadline established for opening in the advertisement
- 5.33 All bids must be opened and read aloud in public

5.4 *Award of Construction Contract*

5.41 Action by board

5.411 Analyze bids and determine lowest *and* best (not necessarily lowest) bidder to whom contract will be awarded; or determine that all bids should be rejected

5.4111 If project is financed 100 percent by general tax monies, (Section 1, resolution), a contract may be awarded even though the lowest and best bid exceeds the engineer's cost estimate made under 3.2, above, so long as there are sufficient appropriated funds to cover the total contract price

5.4112 If project is financed wholly or partially by assessments against benefited property owners (Section 2, resolution), a contract cannot be awarded which will raise the individual property assessments above those set out in the preliminary assessment roll adopted in the resolution. Thus, in order for the board to award a contract whose cost exceeds the estimate under Section 2.32, above, it must, by majority vote, amend the preliminary assessment roll and apportion the additional cost to the city.

5.412 Approve contract award or reject all bids by majority vote

5.413 Execute contract

5.42 Action by contractor

5.421 Furnish performance bond (100 percent of contract price)

5.422 Execute contract

6. COMPLETION OF CONSTRUCTION AND PAYMENT TO CONTRACTOR AND PAYMENTS TO CONTRACTOR FROM GENERAL TAX MONIES

6.1 *Prior Steps Required*

6.11 Award of construction contract per Section 5, above

6.2 *Completion of Construction Work*

6.21 By contractor and his subcontractors

6.22 Under surveillance of board's construction inspector

6.3 *Duties of Board's Construction Inspector*

6.31 Make certain that all work done by contractor and his subcontractors is in reasonable compliance with the intent of plans and specifications

- 6.32 Periodically compute value of work completed by contractor and recommend progress and final payments to contractor for board approval

- 6.33 Review and recommend change orders for board approval

6.4 *Payments to Contractor—Generally*

- 6.41 Upon receipt of contractor payment authorizes from construction inspector, board approves payment less a fifteen (15) percent retainage

- 6.42 Upon certification of satisfactory completion of construction from board's construction inspector, and posting of maintenance bond by contractor, board accepts project, approves final payment of all amounts owed, including retainage, and releases contractor's performance bond

6.5 *Payments to Contractor—Special Provisions for Property Owner Assessment Resolution*

- 6.51 If the entire cost of construction is to be borne by benefited property owners, board issues contractor certificates of indebtedness in lieu of approving payments under 6.4, above

- 6.52 If the cost of construction is to be borne partially by benefited property owners and partially by the city, board issues contractor certificates of indebtedness for the pro-rata property owner share of each billing and approves payment for the pro-rata city share

- 6.53 Contractor redeems certificates of indebtedness in accordance with Section 8, below

7. FINAL ASSESSMENT ROLL ADOPTION

7.1 *Prior Steps Required*

- 7.11 Completion of construction under Section 6, above
- 7.12 Acceptance of project by board and determination of final construction costs per Section 6, above

7.2 *Preparation of Final Assessment Roll*

- 7.21 A duplication of the preliminary assessment roll prepared under 2.4, above, with two principal changes:

- 7.211 Correction of property ownership listing to reflect any property transfers which have occurred since adoption of the preliminary assessment roll

- 7.212 Revision of individual property assessments based upon final project costs

7.3 Introduction of Final Assessment Roll at Board Meeting

- 7.31 Set public hearing date (allowing sufficient time for notice per 7.4, below)
- 7.32 Authorize publication of notice of public hearing

7.4 Notice of Public Hearing on Final Assessment Roll

- 7.41 Contents of notice
 - 7.411 Title of project
 - 7.412 Date, time and place of public hearing
 - 7.413 Purpose of public hearing per 7.52, below
 - 7.414 Name of board
- 7.42 Methods of publication
 - 7.421 Classified newspaper advertisement
 - 7.4211 Two (2) newspapers of general circulation in the city
 - 7.4212 Two (2) publications, seven (7) days apart; last publication no less than ten (10) days prior to the public hearing
 - 7.422 First class U.S. mail to each property owner to be assessed
 - 7.4221 One (1) notice, sent no less than ten (10) days prior to the public hearing
 - 7.4222 Must also list the amount of his assessment proposed in the final assessment roll under 7.2, above

7.5 Public Hearing on Final Assessment Roll

- 7.51 Date, time and place
 - 7.511 In accordance with notice of 7.4, above
 - 7.512 May be adjourned and/or continued from time to time at board's discretion without further newspaper or mail notice of subsequent meetings
- 7.52 Purposes
 - 7.521 Presentation by board of proposed assessments against benefited property
 - 7.522 Presentatoin of testimony and remonstrances respecting proposed assessments by property owners to be assessed
 - 7.523 Adoption of modification of final assessment roll by majority vote of board
 - 7.5231 Must declare that benefits equal assessment for each property
 - 7.5232 Where board determines benefits do not equal proposed assessment, it may make an appropriate assessment reduction. Such reductions must either be ab-

sorbed by the city or apportioned by pro-rata increases in all other assessments. In no event can an individual property assessment exceed the amount listed in the preliminary assessment roll adopted under 2.10, above, unless board repeats 7.2 through 7.5, above

7.6 *Remonstrances Against Final Assessment Roll*

7.61 Only basis for remonstrance

7.611 The assessment is excessive and is greater than the actual benefits accruing to the property by reason of the improvement

7.62 Method of remonstrance

7.621 Property owner must submit written remonstrance to board prior to public hearing on final assessment roll under 7.5, above

7.622 If property owner is not satisfied with board's disposition of his written remonstrance, he may file a lawsuit to have the court settle the issue of 7.611, above. In order to be able to bring such lawsuit, however, he must submit his written remonstrance to the board per 7.621, above

7.7 *Delivery of Final Assessment Roll to City Department of Finance*

7.71 Responsibility of board; should be done immediately upon adoption of final assessment roll under 7.5, above, because of the time limitation for property owners to exercise assessment payment options delineated under 8.215, below

8. COLLECTION OF ASSESSMENTS AND PAYMENTS TO CONTRACTOR

8.1 *Prior Steps Required*

8.11 Adoption of final assessment roll and delivery to city Department of Finance by board under Section 7, above

8.2 *Notice of Assessment to Each Property Owner by City Department of Finance*

8.21 Contents of notice

8.211 Identification of project and board

8.212 Amount of individual property assessment

8.213 Property owner's assessment payment options:

8.2131 Single cash payment

8.2132 Ten (10) equal deferred payment installments over ten (10) years at six (6) percent interest

- 8.21321 May be exercised only if assessment exceeds \$100
- 8.21322 By exercising, property owner waives all rights to object to any illegality or irregularity regarding his assessment
- 8.214 Options under 8.213, above, must be exercised within thirty (30) days of adoption of final assessment roll by board through property owner's return of cash payment or deferred payment installment agreement to city Department of Finance
- 8.215 Failure to exercise options under 8.213, above, will automatically put property owner on delinquent cash payment status with six (6) percent interest due from date of acceptance of project by board
- 8.22 Method of publication
 - 8.221 First class U.S. mail
 - 8.2211 Should be sent as soon as possible after receipt of final assessment roll because of the thirty (30) day statutory return time limitation per 8.214, above
- 8.3 *Notice of Payment Option Choice by Property Owner to City Department of Finance*
 - 8.31 By return date delineated in 8.214, above, property owner must send city Department of Finance:
 - 8.311 Total amount of his assessment in cash or other legal tender; or
 - 8.312 His agreement to make deferred payments over a ten-year period as provided in 8.2132, above
 - 8.32 The payment or deferred payment agreement will meet deadline requirements if delivered in person to city Department of Finance or placed in the U.S. mail by the return date
- 8.4 *Payment to Contractor From Initial Assessment Collections*
 - 8.41 Upon receipt from property owners of all assessment payments in full and agreements to make deferred payments, city Department of Finance issues to the contractor and "cash" on hand—such "cash" consisting of payments from property owners plus any money owed by the city and not yet paid to the contractor. (Note: Barrett Law bonds are not issued separately for each individual property assessed. Rather, they are issued in denominations of \$500.00 to cover the total amount of all unpaid assessments

8.5 *Collection of Deferred Payment Installments From Property Owners*

- 8.51 City Department of Finance establishes a payment ledger for the project and sends invoices once a year to county treasurer for collection of annual deferred payment installments at the same time and in the same manner as property tax installments
- 8.511 If final assessment roll was approved between January 1 and June 30 of a given year, payments are due on the first Monday in November of that year and each year during the life of the deferred payment agreement
- 8.512 If final assessment roll was approved between July 1 and December 31 of a given year, payments are due on the first Monday in May of the following year and each year during the life of the deferred payment agreement
- 8.52 County treasurer sends all collections of deferred payment installments to city Department of Finance

8.6 *Payment of Deferred Payment Installments to Contractor*

- 8.61 From property owner payments received under 8.5, above, city Department of Finance makes payment to contractor by redeeming coupons on all Barrett Law bonds issued against the project under 8.41, above, for which sufficient monies have been received
- 8.62 Contractor (or subsequent Barrett Law bondholder) can only be paid to extent of collections. Delinquent collections are handled per 8.7 below

8.7 *Foreclosure Upon Delinquent Property*

- 8.71 In the event a property owner fails to make a payment under 8.5, above, both the city and the contractor (or subsequent Barrett Law bondholder) may foreclose against him:
 - 8.711 City Department of Finance, through proper legal procedures, has county treasurer sell the property in the same manner as property on which real estate taxes have become delinquent; or
 - 8.712 Contractor (or subsequent Barrett Law bondholder) brings foreclosure suit against delinquent property owner. Upon sale to satisfy court judgment, bondholder receives his share of proceeds, and surplus is paid to "party rightfully entitled thereto"